

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____ ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:96CV01285
)	(Judge Lamberth)
GALE A. NORTON, Secretary of the)	
Interior, et al.,)	
)	
Defendants.)	
_____)	

NOTICE OF FILING

Defendants give notice of the filing of the attached Notice #4 by the Department of the Interior regarding the Court's Order of September 29, 2004 (DKT 2708), as clarified by the Court's Orders of October 1, 2004 (DKT 2713), October 22, 2004 (DKT 2743), and November 17, 2004 (DKT 2763), and in recent status conferences.

Dated: November 29, 2004

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General
PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

/s/ Sandra P. Spooner
SANDRA P. SPOONER
Deputy Director
D.C. Bar No. 261495

JOHN T. STEMPLEWICZ
Senior Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

CERTIFICATE OF SERVICE

I hereby certify that, on November 29, 2004 the foregoing *Notice of Filing* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

NOTICE #4

To: Agents, Representatives, Employees, Officers and Counsel of the U.S. Department of the Interior Involved with Indian Trust Matters

Date: November 22, 2004

Re: Communication with Members of Plaintiff Class in *Cobell v. Norton*

THIS NOTICE SUPPLEMENTS THREE PRIOR NOTICES ISSUED
SEPTEMBER 30, 2004, OCTOBER 4, 2004, AND OCTOBER 8, 2004

Since September 29, 2004, the Court in the *Cobell v. Norton* class action litigation has approved the text of a notice and waiver form and clarified the process by which the Department is to proceed with communications with members of the plaintiff class¹ related to the sale, exchange, transfer or conversion of Indian trust lands.

1. **Oral** communication with members of the plaintiff class about the sale, exchange, transfer or conversion of Indian trust land and about any other matters in the ordinary course of business, is not prohibited, whether in person or by telephone. Oral or written communication with members of the plaintiff class about the *Cobell* case or matters being litigated in that case, is still prohibited.

2. **Written** communication with members of the plaintiff class about the sale, exchange, transfer or conversion of Indian trust land must include the court-approved Notice and Waiver form attached as Attachment 1, the cover letter attached as Attachment 2, and the Confirmation of Consultation attached as Attachment 3. If transactions are occurring face-to-face which include written communications, it is perfectly acceptable to hand these Attachments to someone in person. These attachments are not required in the transmissions of checks, notifications of electronic funds transfers, and quarterly IIM account statements.

3. The **Notice and Waiver (Attachment 1)** informs the Indian trust land owner of his or her right to **consult** with the class counsel in the *Cobell* litigation, prior to proceeding with any further communication or the transaction, or to **waive** that right. The names, electronic mail addresses, and phone numbers of class counsel are in the Notice and Waiver.

¹An individual is a member of the plaintiff class if he or she was, as of February 4, 1997, a present or former beneficiary of Individual Indian Money accounts.

4. **The Confirmation of Consultation (Attachment 3)** is for the purpose of documenting that the Indian trust land owner consulted with class counsel, if he or she chooses to do so.

5. **After providing Attachments 1, 2, and 3 to the Indian trust land owner, the Department shall not engage in any further written communication with that individual about the sale, exchange, transfer or conversion of his or her land, until one of the following events (A or B) occurs:**

A. The Indian trust landowner or guardian signs and submits to the Department the **Notice and Waiver (Attachment 1)** form, or an earlier version of this form previously distributed by the Department of the Interior, in accordance with the following requirements:

(1) The form must be **signed** by the Indian trust landowner or his or her guardian.

(2) Earlier versions of this form previously distributed by the Department of the Interior will be accepted, so long as the signature is verified in accordance with paragraph 5.A.(4) below.

(3) Purported waivers which are **not** on the attached Notice and Waiver form or on an earlier version of the form **are not acceptable**. The court has required that waiver be accomplished on a court-approved form. If the Indian trust land owner drafts his or her own waiver, it will not be accepted unless it is identical to the form attached to this guidance.

(4) The signature of the Indian trust landowner or guardian on the Notice and Waiver form **must be verified** by the Department by requiring the signatory to produce identification, or by requiring that the signature be witnessed. If the latter method of verification is used, the witness to the signature must also sign the form on the line provided, indicating that the witness is attesting to the authenticity of the signature of the Indian trust landowner or guardian. If verification of the signature by either of these methods is not feasible, please contact Janet A. Goodwin (202-208-3962) or Kaniah Konkoly-Thege (202 208-5134) of the Office of the Solicitor for additional guidance. The signatures on forms signed before November 17, 2004 **need not be verified in accordance with this paragraph, since that requirement was not ordered by the court until that date.**

(5) Although the Notice and Waiver states that it must be returned within 10 days of the date it was provided to the Indian trust land owner, it must be accepted by the Department if returned at any time.

(6) The original signed Notice and Waiver must be filed at the Bureau of Indian Affairs field office. A copy must be faxed to Kaniah Konkoly-Thege in the Office of the Solicitor at fax number 202-219-0559; and a copy must also be included with the transaction documents submitted to the Office of Special Trustee for processing.

B. The Indian trust landowner, guardian, or legal representative signs and submits to the Department the **Confirmation of Consultation (Attachment 3)** form, in accordance with the following requirements:

(1) A signed copy of the Attachment 3 form being provided with this guidance is sufficient. However, if the Indian trust landowner, guardian, or legal representative submits a written statement confirming consultation with class counsel that is differently worded but substantively the same as the sample provided, that written statement will also be sufficient. Verification of the signatures of the Indian trust land owner or the guardian on the Confirmation of Consultation statement is required, as described in paragraph 5.A.(4) above. A signature of a legal representative must be identified as such and must be verified as described in paragraph 5.A.(4) above.

(2) A properly-completed **Confirmation of Consultation** will be accepted by the Department at any time.

(3) The original signed **Confirmation of Consultation** must be filed at the Bureau of Indian Affairs field office. A copy of the signed Confirmation of Consultation must be faxed to Kaniyah Konkoly-Thege in the Office of the Solicitor at fax number 202-219-0559; and a copy must also be included with the transaction documents submitted to the Office of the Special Trustee for processing.

6. Upon receipt of a properly signed Notice and Waiver (Attachment 1) or a properly signed Confirmation of Consultation (Attachment 3) the Department may continue with written communications with Indian trust land owners about the sale, exchange, transfer, or conversion of their land. If the Indian trust land owner has submitted a signed Notice and Waiver (Attachment 1) in accordance with paragraph 5.A above, the Department is required to include the Notice (Attachment 4) with all subsequent written communications to the Indian trust land owner about the sale, exchange, transfer or conversion of his or her land. If the Indian trust land owner has submitted a signed Confirmation of Consultation (Attachment 3) in accordance with paragraph 5. B above, the Department is required to include a Notice and Waiver form (Attachment 1) with all subsequent written communications to the Indian trust land owner about the sale, exchange, transfer or conversion of his or her land. If the Indian trust land owner submits a properly signed Notice and Waiver at any time, the Department need enclose only the Notice (Attachment 4) with subsequent written communications.

7. Although it is important to continue to be as accommodating as possible to those you serve, avoid giving advice or interpreting the content of the notice or waiver. Refer questions about it to class counsel. You may allow the Indian trust land owner to use a Department telephone to call class counsel.

8. If the Indian trust land owner wishes to proceed with written communications with the Department about the sale, exchange, transfer or conversion of his or her land, but refuses or is unable for some reason to provide a signed **Notice and Waiver** form or a signed **Confirmation of Consultation** form to the Department, please contact Janet A. Goodwin (202-208-3962) or Kaniah Konkoly-Thege (202-208-5134) in the Office of the Solicitor for further guidance.

9. There are no restrictions on written communications between the Department, its agents, representatives, employees, officers, and counsel and members of the plaintiff class regarding transactions in any of the following categories:

(1) Encumbrances, leasing, lease sales, permitting, rights-of-way, and timber sales of or on individually-owned Indian trust land:

(2) The investment of trust funds in IFM accounts;

(3) Estate planning, will drafting and the probate of or relating to Indian trust assets;

(4) The surveying or appraisal of trust assets;

(5) Title to trust lands;

(6) Ownership of trust funds or lands; or

(7) Physical improvement or alternation of trust assets.

10. These procedures must be followed with regard to **each** particular land transaction. In other words, a waiver or a confirmation of consultation signed by the Indian trust land owner is effective only with regard to a particular transaction concerning his or her trust land.

Attachment 1: Notice and Waiver

Attachment 2: cover letter

Attachment 3: Confirmation of Consultation

Attachment 4: Notice

Notice and Waiver

Attachment 1 to 11/22/04 guidance

Please be aware that the Indian trust land owner to whom this notice is directed may be a member of a class action lawsuit, Cobell v. Norton, No. 1:96CV01285 (D.D.C.) (Judge Lamberth). Nothing in this notice or any letter, document, or other communication to which this notice may be attached will eliminate or adversely affect any rights that the Indian trust land owner who received this notice may have if he or she is a class member in the Cobell litigation. The Indian trust land owner who received this notice will not eliminate or adversely affect any rights that he or she may have as a class member by entering into any transaction or communication with any other person or organization, including the Department of the Interior or the Bureau of Indian Affairs, related to the sale, exchange, transfer, or conversion of Indian trust land.

As a potential class member, the Indian trust land owner who received this notice has the right to consult with the class counsel in the Cobell litigation prior to any proceeding with any further communication or transaction. For further information you may contact the lawyers for the class members: Dennis M. Gingold, Esq., 607 14th Street, N.W., 9th Floor, Washington, DC 20005, phone: (202) 824-1448, fax: (202) 318-2372, email: dennismgingold@aol.com, or Keith Harper, Esq., Native American Rights Fund, 1712 N Street N.W., Washington, DC 20036-2976, phone: (202) 785-4166, fax: (202) 822-0068, email: harper@narf.org. You may also access further information at the plaintiffs' website, www.indiantrust.com. The Indian trust land owner who received this notice may also choose to waive his or her right to consult with class counsel. If the Indian trust land owner who received this notice wishes to do so, he or she must sign and return this notice to the Department of the Interior office from which you received it within ten (10) days. Waiver of the right to consult with class counsel will not eliminate or adversely affect any rights that the Indian trust land owner who received this notice may have as a class member in the Cobell litigation.

I, the undersigned, hereby waive my right to consult with class counsel in the Cobell litigation before continuing with communications or transactions involving or resulting in the sale, exchange, transfer, or conversion of Indian trust land.

Print Name

Signature

Date

SIGNATURE CONSTITUTES WAIVER

Witness

Cover Letter

Attachment 2 to 11/22/04 guidance

November 22, 2004

Dear Sir or Madam:

You are receiving the enclosed notice because you have been identified as a potential member of a class action lawsuit, *Cobell v. Norton*, Civ. 1:96CV01285 (D.D.C.). The District Judge in *Cobell* has issued Orders governing the Department of the Interior's communications with class members related to the sale, exchange, transfer, or conversion of Indian trust land. Enclosed please find a copy of the Notice and Waiver required by the Court.

Sincerely,

Director, Bureau of Indian Affairs
U.S. Department of the Interior

Confirmation of Consultation

As a potential member of the plaintiff class in Cobell v. Norton, No. 1:96CV01285 (D.D.C.) (Judge Lamberth), I have consulted with class counsel and wish to proceed with further communications with the Department of the Interior and with transactions involving or resulting in the sale, exchange, transfer, or conversion of my interests in Indian trust land.

Class counsel includes:

Dennis M. Gingold, Esq., 607 14th Street, N.W., 9th Floor, Washington DC 20005,
phone: (202) 824-1448, fax: (202) 318-2372, email: dennismgingold@aol.com
Keith Harper, Esq., Native American Rights Fund, 1712 N Street N.W., Washington, DC
20036-2976, phone: (202) 785-4166, fax: (202) 822-0068, email:
harper@narf.org.

Print Name

Signature

Date

Witness

Notice

Attachment 4 to 11/22/04 guidance

Please be aware that the Indian trust land owner to whom this notice is directed may be a member of a class action lawsuit, Cobell v. Norton, No. 1:96CV01285 (D.D.C.) (Judge Lamberth). Nothing in this notice or any letter, document, or other communication to which this notice may be attached will eliminate or adversely affect any rights that the Indian trust land owner who received this notice may have if he or she is a class member in the Cobell litigation. The Indian trust land owner who received this notice will not eliminate or adversely affect any rights that he or she may have as a class member by entering into any transaction or communication with any other person or organization, including the Department of the Interior or the Bureau of Indian Affairs, related to the sale, exchange, transfer, or conversion of Indian trust land.

As a potential class member, the Indian trust land owner who received this notice has the right to consult with the class counsel in the Cobell litigation prior to any proceeding with any further communication or transaction. For further information you may contact the lawyers for the class members: Dennis M. Gingold, Esq., 607 14th Street, N.W., 9th Floor, Washington, DC 20005, phone: (202) 824-1448, fax: (202) 318-2372, email: dennismgingold@aol.com, or Keith Harper, Esq., Native American Rights Fund, 1712 N Street N W., Washington, DC 20036-2976, phone: (202) 785-4166, fax: (202) 822-0068, email: harper@narf.org. You may also access further information at the plaintiffs' website, www.indiantrust.com.